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October 17, 2003

BY ELECTRONIC DELIVERY

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Ex Parte

Re: CC Docket No. 96-149 (Verizon OI&M Petition for Forbearance)

Dear Ms. Dortch:

Verizon has requested in the above-captioned docket that the Commission forbear under section 10(c) of the Act from requiring Verizon's section 272 affiliate to "operate independently" with regard to the sharing of operating, installation, and maintenance (OI&M) services. In support of that request, Verizon has filed three written *ex parte* presentations: (1) "The Limitation in Section 10(d) Does Not Prevent the Commission from Forbearing from Applying the OI&M Regulations," dated June 23, 2003; (2) "Section 10(d) Does Not Limit the Commission's Authority to Forbear from Its OI&M Regulations," dated October 1, 2003; and (3) Letter from Dee May, dated October 14, 2003. The attached written *ex parte* presentation, entitled "The Commission Lacks Authority to Forbear From Enforcing the Prohibition Against Verizon's Sharing of Operating, Installation and Maintenance Services With its Section 272 Affiliate," responds to Verizon's three *ex parte* submissions.

Pursuant to the Commission's rules, 47 C.F.R. § 1.1206(b), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding. Please do not hesitate to contact me if you have any questions regarding this submission.

Sincerely,

/s/ A. Renée Callahan

A. Renée Callahan

Attachment

cc: John Rogovin
Linda Kinney
Ann Bushmiller
Jeffrey Dygert
Paula Silberthau
John Stanley
Debra Weiner
Matthew Brill
Daniel Gonzalez
Christopher Libertelli
Jessica Rosenworcel
Lisa Zaina
William Dever
Christi Shewman

The Commission Lacks Authority to Forbear From Enforcing the Prohibition Against Verizon's Sharing of Operating, Installation and Maintenance Services With its Section 272 Affiliate

I. Introduction and Summary

Verizon Communications Inc. (Verizon) has requested that the Commission forbear under section 10(c) of the Communications Act of 1934, as amended (Act), from requiring Verizon's section 272 affiliate to "operate independently" with regard to the sharing of operating, installation, and maintenance (OI&M) services.[1] Section 272, however, requires that Verizon's in-region, interLATA affiliate operate independently for a minimum of three years from the grant of in-region, interLATA authority. Moreover, section 10(d) precludes the Commission from forbearing from applying the requirements of section 271 until those requirements have been "fully implemented."[2] As explained below, section 271(d)(3) incorporates by reference section 272's separate affiliate requirements. Thus, the Commission lacks the authority to grant the relief requested by Verizon until either the section 272 separate affiliate requirements have sunset, or the requirements of section 271 have been "fully implemented," whichever occurs later.

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1 *See* Petition for Forbearance, *Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions*, CC Docket No. 96-149 (Aug. 5, 2002) ("Verizon Petition"). BellSouth and SBC have filed similar forbearance petitions raising virtually identical arguments regarding the operation of 10(d). *See* Petition of BellSouth for Forbearance From the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Section 53.203(a)(2)-(3) of the Commission's Rules, CC Docket 96-149 (July 14, 2003); Petition of SBC for Forbearance From the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Sections 53.203(a)(2) and 53.203(a)(3) of the Commission's Rules and Modification of Operating, Installation and Maintenance Conditions Contained in the SBC-Ameritech Merger Order, CC Docket 98-141 (June 5, 2003). For the reasons discussed herein, those petitions should also be denied.

2 47 U.S.C. § 160(d).

Because Verizon clearly has not demonstrated that the requirements of section 271 have been fully implemented in the states in which it has received in-region, interLATA authority, its petition must be denied.

II. Section 272 Bars the Relief Requested By Verizon

Section 272(f)(1) provides that:

> The provisions of this section (other than subsection (e)) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d), unless the Commission extends such 3-year period by rule or order.[3]

Congress, thus, plainly intended that the section 272 separate affiliate safeguards would remain in place for a minimum of three years following a BOC's in-region entry. The legislative history further supports this conclusion. During the final mark-up of the Telecommunications Act of 1996, the House-Senate Conference Committee deleted a provision in the Senate bill that would have allowed the Commission to grant an exception to section 272 "upon a showing that granting of such exception is necessary for the public interest, convenience, and necessity."[4] The conferees instead adopted section 272(f)(1)'s three-year sunset provision.[5] In the words of Representative Conyers, "even after entry occurs, section 271 applies separate affiliate requirements for *at least 3 years* in order to check potential market power abuses."[6] By enacting this statutory sunset,

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3 47 U.S.C. § 272(f)(1).

4 *See* 142 Cong. Rec. H. 1078, 1118 (1996).

5 *Id.*

6 142 Cong. Rec. H. 1145, 1171 (Feb. 1, 1996) (statement of Rep. Conyers) (emphasis added).

Congress specifically dictated the circumstances in which the FCC should forbear from enforcing the requirements of section 272.

Verizon, however, claims that it would have been "nonsensical" for Congress to allow the section 272 safeguards to sunset while at the same time barring the FCC from forbearing from enforcing those requirements prior to sunset.[7] In fact, by enacting section 272(f)(1), Congress determined when it would be appropriate to relieve the BOCs of their obligation to maintain a separate affiliate for in-region, interLATA services. Thus, contrary to Verizon's claims, it would have been "nonsensical" under this statutory scheme for Congress *at the same time* to have granted the FCC authority to override Congress' determination that the section 272 separate affiliate safeguards remain in place for a minimum of three years. Indeed, such a reading would render section 272's three-year period superfluous, in violation of the basic rules of statutory construction.[8]

Verizon further claims that it makes no sense to conclude that the Commission cannot forbear under section 10(d) from section 272 until after those provisions have already dissolved by operation of law.[9] According to Verizon, this "interpretation would

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[7] "The Limitation in Section 10(d) Does Not Prevent the Commission from Forbearing from Applying the OI&M Regulations" at 7 (June 20, 2003) ("Verizon 6/23 Memo"), attached to *Ex Parte* Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-149 (June 23, 2003).

[8] *See, e.g., George Duncan v. Sherman Walker*, 533 U.S. 167, 174 (2001) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.' . . . We are thus 'reluctant to treat statutory terms as surplusage' in any setting.") (citations omitted); *Asiana Airlines v. FAA*, 134 F.3d 393, 398 (D.C. Cir. 1998) ("A cardinal principle of interpretation requires us to construe a statute 'so that no provision is rendered inoperative or superfluous, void or insignificant.'") (citations omitted).

[9] *See Ex Parte* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-149, at 2 (Oct. 14, 2003) ("Verizon 10/14 Letter").

deprive the Commission of all forbearance authority with respect to section 272."[10] Verizon's argument, however, ignores the fact that not all of the requirements of section 272 dissolve after three years. In particular, the nondiscrimination requirements of section 272(e) expressly survive section 272(f)(1)'s three-year sunset provision.[11] Thus, a reading of the sunset provision to preclude forbearance for a minimum of three years does not, in fact, "deprive the Commission of all forbearance authority with respect to section 272." To the contrary, reading the statute to preclude the FCC from forbearing from the separate subsidiary requirements of section 272 for a minimum of three years gives effect both to section 10(d)'s restriction and section 272's sunset provision.[12]

III. Section 10(d) of the Act Further Precludes Forbearance from the Section 272 Requirement that Verizon's Affiliate Operate Independently Until the Requirements of Section 271 Have Been "Fully Implemented."

Section 10(d) of the Act states in relevant part that:

> the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.[13]

Section 271 in turn requires that provision of interLATA services under 271(d)(3)(B) be "carried out in accordance with the requirements of section 272," including 272(b)(1)'s requirement that the separate affiliate "operate independently."[14] The plain language of section 271 unambiguously incorporates section 272's separate affiliate requirements for

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10 *Id.*

11 47 U.S.C. § 272(f)(1).

12 *See* cases cited *supra* note 8.

13 47 U.S.C. § 160(d).

14 47 U.S.C. §§ 271(d)(3)(B), 272(b)(1).

interLATA services requiring prior authorization pursuant to section 271(d)(3),[15] and section 10(d) expressly prohibits the FCC from forbearing "from applying the requirements of section . . . 271" until those requirements have been "fully implemented."[16]

Despite this clear language, Verizon argues in three separate submissions that section 10(d) does not restrict the Commission's authority to forbear from applying section 272 and that "[t]here is no basis to interpret section 10(d) to incorporate section 272 based on the single reference to section 272 in section 271(d)(3)(B)."[17] As shown below, Verizon's legal arguments in support of its petition are without merit. The Commission is barred from forbearing from applying section 272's separate affiliate requirements to Verizon until either the section 272 separate affiliate requirements have sunset, or the requirements of section 271 have been "fully implemented," whichever occurs later. Verizon's petition, therefore, must be denied.

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15 WorldCom Opposition at 1-3, *Verizon Petition for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions*, CC Docket No. 96-149 (Sept. 9, 2002) ("MCI Opposition").

16 47 U.S.C. § 160(d). *See, e.g., United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) ("where . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'") (citation omitted); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 & n.12 (1987) (the "ordinary and obvious meaning" of a statutory phrase "is not to be lightly discounted") (citations omitted); *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1983) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

17 *See* Verizon 6/23 Memo at 1-2; "Section 10(d) Does Not Limit the Commission's Authority to Forbear from Its OI&M Regulations" at 7-8 ("Verizon 10/1 Memo"), attached to *Ex Parte* Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-149 (Oct. 1, 2003); Verizon 10/14 Letter.

A. The Bureau's *E911 Order* Explicitly Holds that Section 10(d)'s Prohibition Extends to Section 272 for InterLATA Services Requiring Prior Authorization Pursuant to Section 271(d)(3).

The Common Carrier Bureau in the *E911 Order* examined the relationship between section 10(d) and section 271(d)'s requirement that a BOC provide in-region, interLATA services in accordance with the requirements of section 272.[18] There, the BOCs had requested that the Commission forbear from applying the separate affiliate requirements of section 272 to the provision of enhanced 911 and reverse directory services. In ruling on those petitions, the Bureau analyzed whether section 10(d) barred the FCC from granting the requested relief.[19] The Bureau concluded that it lacked authority under section 10(d) to forbear from the requirements of section 272 for any BOC services requiring prior authorization under section 271(d)(3). In particular, the Bureau stated: "[S]ection 10(d), read in conjunction with section 271(d)(3)(B), *precludes our forbearance . . . from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(3).*"[20] Since the

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[18] *Bell Operating Companies' Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934*, 13 FCC Rcd 2627 (Com. Car. Bur. 1998) ("*E911 Order*"). Verizon breezily dismisses the *E911 Order* – the sole precedent on point – by characterizing it as a "suggestion in dictum in one decision that there was some distinction between the authority to forbear from section 272 with respect to some section 271 services and not others." *See* Verizon 6/23 Memo at 8 n.13. Verizon instead relies on three cases involving incidental interLATA services provided pursuant to section 271(g)(4). *See id.* at 7-8. As discussed below, those cases involve services that do not require prior authorization under section 271(d)(3), and are thus inapposite.

[19] *E911 Order* ¶ 21. The FCC ultimately granted forbearance because the two services at issue did not require prior authorization under section 271(d)(3).

[20] *E911 Order* ¶ 23 (emphasis added); *see also id.* ¶ 22 ("prior to their full implementation we lack authority to forbear from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3)"). Prior FCC precedent further confirms that section 10(d) prohibits the FCC from forbearing not only from the express requirements of section 271, but also from any requirement that would impermissibly circumvent section 271. *See Application*

Verizon petition seeks to remove the OI&M safeguards for services requiring prior approval under section 271(d)(3), section 10(d) clearly bans the Commission from granting that relief.

B. Verizon's Arguments that Section 10(d) Does Not Preclude Forbearance from Section 272 are Baseless.

Verizon raises a number of arguments in support of its claim that section 10(d) does not bar the FCC from forbearing from the requirements of section 272. As discussed below, each of Verizon's myriad arguments is without merit.

Plain Language of Section 10(d). As an initial matter, Verizon argues that the mere mention of section 272 in section 271 cannot "pull that provision into the ambit of section 10(d)."[21] If it did, Verizon reasons, then Congress would not have needed to include a reference to section 251(c) in 10(d), because section 271 also mentions 251(c). Verizon concludes that it therefore is "clear, then, on the face of the statute that Congress never intended such daisy-chaining."[22] This argument is meritless for several reasons.

First, section 271 does not "simply mention" section 272; rather, section 271(d)(3) requires that the provision of in-region, interLATA services "be carried out in accordance with the requirements of section 272." Second, Verizon's argument ignores

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for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S West Petitions to Consolidate LATAs in Minnesota and Arizona, 14 FCC Rcd 14392, ¶¶ 17, 19 (1999) (upholding the Bureau's conclusion that Section 10(d) limits the manner in which the Commission may exercise its sole and exclusive authority to approve the establishment of or modification to LATA boundaries; although section 271 does not cross-reference the FCC's authority to modify LATAs, the FCC nonetheless concluded that it could not implicitly have delegated its authority over LATA boundaries because doing so would have required the Commission "to take steps to ensure that such a delegation would not violate section 10(d)," which the Commission had not done).

21 *See* Verizon 6/23 Memo at 2.

22 *Id.*; *see also* Verizon 10/1 Memo at 8.

the fact that the competitive checklist in section 271 does not incorporate all of section 251(c); it incorporates only subsections (c)(2)-(4).[23] Third, section 271 applies only to the BOCs, while section 251(c) applies to all incumbent LECs. In order to ensure that the remaining obligations of section 251(c) applied to the BOCs and that all incumbents, not just the BOCs, were encompassed by section 10(d)'s prohibition, it was thus necessary for Congress to include a general reference to 251(c) in section 10(d).[24]

Verizon next argues that the Commission does not have authority to expand section 10(d)'s list of exceptions to include section 272 because "traditional principles of statutory construction specifically prohibit expansion of a statute's narrow list of articulated exceptions."[25] Whatever the merits of that line of argument, it is simply inapplicable in this case. Section 10(d)'s list already incorporates by reference the requirements of section 272.[26] Moreover, the Supreme Court has confirmed in a different

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[23] 47 U.S.C. § 271(c)(2)(B) (explicitly incorporating subsections 251(c)(2)-(4)); *see also Application by SBC Communications, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, ¶ 64 (2000) ("*Texas 271 Order*") (implicitly incorporating subsection 251(c)(6) into subsection 271(c)(2)(B) by stating that the "provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist").

[24] Moreover, as AT&T notes, "Congress often drafts statutes to make assurance of a goal 'doubly sure,' and it is far more sensible to interpret a statute to do so than to ignore its plain meaning." *Ex Parte* Letter from David L. Lawson, on behalf of AT&T, to Marlene Dortch, FCC, CC Docket No. 96-149, at 3 (July 9, 2003) ("AT&T Letter").

[25] *See* Verizon 6/23 Memo at 3; Verizon 10/1 Memo at 8-9.

[26] *See* AT&T Letter at 3 ("This argument simply begs the question, however, because section 272 is incorporated by reference in 271 and is, accordingly, already on the list.").

context that additional requirements of a statute may be incorporated by reference into an enumerated list of statutory provisions.[27]

Verizon further contends that its distorted reading of section 10 is supported by three prior FCC cases involving incidental interLATA services encompassed by section 271(g)(4).[28] The BOCs, however, do not require prior FCC approval under section 271(d)(3) to offer incidental interLATA services. Consequently, those services are not subject to a requirement that they "be provided in accordance with section 272," and, section 10(d), therefore, does not incorporate Section 272's requirements for such services.

The *E911 Order* confirms precisely this distinction. As noted, the Bureau concluded in that order that "[a]lthough section 271(d)(3) requires the Commission's prior approval of a BOC's application to provide in-region, interLATA service and the criteria for approval include compliance with section 272, prior Commission approval pursuant to section 271(d)(3) is not required where, as here, the BOCs provide services that are either previously authorized within the meaning of section 271(f) of the Communications Act or incidental interLATA services as defined by section 271(g) of

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[27] In *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Supreme Court examined the scope of section 401(d) of the Clean Water Act (CWA), which authorizes the states to ensure that certain activities comply with any applicable limitations under sections 301, 302, 306, and 307 of the CWA (as well as appropriate state law requirements). *Id.* at 712. During the 401(d) certification process, the state had imposed minimum stream flow requirements pursuant to section 303 of the CWA. *Id.* Despite the fact that section 303 was not one of the statutory provisions explicitly listed in section 401(d), the Supreme Court nonetheless concluded that section 303's requirements had been incorporated by reference through section 301. *Id.* at 713. As a result, the Court held that the states were permitted to impose section 303's requirements through the 401(d) certification process. *Id.*

[28] *See* Verizon 6/23 Memo at 7-8.

that Act."[29] In short, because none of the FCC decisions cited by Verizon involves services that require prior authorization under section 271(d)(3), those cases are simply inapposite.[30]

Critical Role of Section 272 Safeguards. Verizon alternately contends that, to the extent there is any ambiguity, the policies underlying sections 271-272 of the Act support its reading of section 10(d). According to Verizon, Congress intentionally omitted section 272 from 10(d)'s bar because it "does not play a part in *opening* local markets to competition."[31] To the contrary, both Congress and the Commission have recognized that section 272 is a critical component of the Act's market-opening framework. Congress recognized (as Verizon points out) that a grant of section 271 authority "does not require that competition actually exist in local markets dominated by the RBOCs before they are able to use their substantial market power to enter long distance markets."[32] Thus, Congress relied on the Act's structural separation requirements as a means of ensuring that markets would remain open after the competitive checklist had been satisfied.[33] The Commission has similarly concluded that section 272 plays a key

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29 *E911 Order* ¶ 2.

30 Verizon's related contention that there is no "valid policy basis" for treating section 271(g)(4) incidental and section 271(d)(3) non-incidental, in-region, interLATA services differently under section 10(d), *see* Verizon 6/23 Memo at 8, is likewise baseless. Since Congress chose to treat these two types of interLATA services differently under section 271, the *E911 Order* reasonably interpreted the scope of section 10(d)'s restriction to be consistent with that scheme.

31 Verizon 6/23 Memo at 5; Verizon 10/1 Memo at 9-10.

32 Verizon 6/23 Memo at 6. The fact that Congress recognized that the BOCs would dominate local markets post-271 approval is consistent with its requirement that the section 272 safeguards remain in place for a minimum of three years.

33 *See, e.g.*, 141 Cong. Rec. S. 8206, 8207 (June 13, 1995) (statement of Sen. Lott) (arguing against an expanded role for the U.S. Department of Justice with respect to Bell company applications on the grounds that the separate subsidiary requirements codified

role in bringing consumers the full benefits of competition by deterring and enhancing the detection of anticompetitive discrimination and cost-shifting at a time when the BOCs have interLATA authority and also continue to dominate local markets.[34]

The importance of section 272 is further underscored by section 271's enforcement mechanism. Under section 271(d)(6), if, at any time, a BOC ceases to meet any of the conditions required for section 271 approval – including compliance with section 272 – the FCC has authority to suspend or revoke that approval.[35] As AT&T points out, it is inconceivable that "Congress would have thought it vital to open markets to competition, but of less urgency to safeguard the competition so difficult to create."[36]

Legislative History of Section 10. Verizon also argues that section 10's legislative history of "progression from permissive forbearance to mandatory forbearance," coupled with the "broad sweep of section 10," requires that section 10(d) be narrowly construed.[37] As noted, the language of section 10(d) is plain on its face and,

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in section 272 act as a protective firewall); *see also id.* at 8220 (statement of Sen. Pressler) (relying on protections afforded by the separate subsidiary requirements); 141 Cong. Rec. S. 7942, 7951 (June 8, 1995) (statement of Sen. Kerrey) (same).

34 *See, e.g., Implementation of the Non-Accounting Safeguards of Sections 271and 272 of the Communications Act of 1934*, 11 FCC Rcd 21905, ¶ 347 (1996) ("*NAS Order*") ("as we observed in the Notice, effective enforcement of the conditions of interLATA entry, including the separate affiliate and nondiscrimination requirements of section 272, is critical to ensuring the full development of competition in the local and interexchange telecommunications markets"); *Application by Qwest Communications International Inc., for Authorization To Provide In-Region, InterLATA Services in Minnesota*, 18 FCC Rcd 13323, ¶ 62 (2003) ("compliance with section 272 is 'of crucial importance' because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field") (citation omitted).

35 47 U.S.C. § 271(d)(6)(A)(iii).

36 AT&T Letter at 9.

37 Verizon 6/23 Memo at 3-4.

accordingly, there is no need for the FCC to look beyond that clear mandate.[38] The legislative history, moreover, does not support Verizon's interpretation of section 10(d). As AT&T points out, section 10(d)'s legislative history is equally if not more reasonably interpreted as a progression from authorizing forbearance generally to imposing limits on the Commission's authority to forbear, including the flat prohibition at issue here.[39]

Verizon also makes much of the fact that "[t]he legislative history does not even hint that Congress even *considered* excepting 272 from the Commission's forbearance authority."[40] Congress, of course, well understood that there was no need to list section 272 separately, since it was already incorporated by reference in section 271(d)(3).

In addition, Verizon contends that the FCC must interpret section 10(d) consistently with Congress' intention to empower the FCC to forbear from applying unnecessary regulations.[41] This argument simply begs the question. Section 271's incorporation of section 272 plainly shows that Congress viewed those safeguards as both vital to its pro-competitive objectives and subject to the section 10(d) limitation that applies to other provisions of section 271.[42] In short, even if there were ambiguity, the legislative history provides no support for Verizon's interpretation of section 10(d). Moreover, as Verizon acknowledges, the primary impetus behind enactment of section 10 was to give the FCC the authority to forbear from requiring tariffs for interexchange

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38 *See supra* pages 4-5 & n.16.

39 AT&T Letter at 4 n.3.

40 Verizon 6/23 Memo at 3-4.

41 *Id.* at 4-5.

42 *See* AT&T Letter at 4 n.4 (noting that Senator McCain's statement, cited by Verizon in support of this proposition, "does not identify any particular regulation as unnecessary, let alone the provisions of section 272 incorporated by reference into section 271").

services.[43] Congress was well aware of the FCC's unsuccessful attempts to detariff long distance service. Further, the evolution of the interexchange industry from monopoly to competition underscored the need for Congress to grant the Commission flexibility to adapt regulatory regimes where market structures had become competitive. Thus, far from supporting Verizon's interpretation, the history of section 10(d) makes clear that Congress gave the FCC authority to forbear from statutory provisions and regulations *only under limited conditions*, *i.e.*, where markets have become fully competitive and regulatory requirements are no longer necessary.

Meaning of "Requirements" in Section 10(d). Verizon further claims, in the alternative, that, even if section 10(d) bars the FCC from forbearing from the requirements of section 272, that does not prevent the Commission from granting the requested relief because Verizon is merely asking the Commission to forbear from "one of many regulations under section 272, not from the application of the statute itself."[44] Specifically, according to Verizon, "while section 10(a) grants the Commission forbearance authority with respect to 'any regulation *or any provision* of this Act,' (emphasis added), section 10(d) bars forbearance with respect only to 'the requirements of sections 251(c) or 271' themselves."[45]

The Commission, however, has already determined that the OI&M rule is a requirement of section 272. In the *Non-Accounting Safeguards Order*, the FCC expressly noted that the separate affiliate rules were adopted "to implement the requirements of

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43 Verizon 10/1 Memo at 7 ("Congress's adoption of section 10 was in part a response to court decisions limiting the Commission's implicit forbearance authority.") (citation omitted).

44 Verizon 6/23 Memo at 9.

45 *Id.*

section 272(b)(1)."[46] Thus, the Commission's rules implementing section 272, including the OI&M rule, clearly represent the agency's authoritative statement of what that statutory provision requires.

Verizon further claims that "[i]t thus is clear that Congress intended to limit forbearance authority only with respect to the enumerated statutory provisions themselves, not any regulations thereunder, and that it perceived the difference between the two."[47] To the contrary, Congress' use of the word "requirements" in section 10(d), instead of "regulation" or "provision," which it used in section 10(a), supports a finding that "requirements" means something different from or in addition to the statutory "provision" itself. Otherwise, there would have been no need for Congress to prohibit forbearance from applying the "requirements" of section 272 when it could have simply prohibited forbearance from applying any "provision" of section 272. In fact, the most plausible reading of section 10 is that "requirements" includes *both* the enumerated statutory provision and the FCC implementing regulations. This reading of section 10 is supported by the rules of statutory construction, which provide that, if a statute uses two

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46 *NAS Order* ¶ 149.

47 Verizon 6/23 Memo at 9; *see also* Verizon 10/1 Memo at 1 ("the prohibition against sharing of OI&M services is *not* required by section 272 of the Act"). Verizon further argues in its October 1 submission that the FCC never suggested in the *1998 Biennial Review* that "requirements" includes both statutory provisions and the regulations implementing those provisions. Verizon 10/1 Memo at 6-7. In fact, the FCC suggested precisely that when, during the course of discussing section 10(d)'s "clear limitations" on its authority to forbear, the Commission indicated that it was not at that time proposing "to forbear from applying either of these statutory provisions [sections 251(c) or 271] *or the regulations implementing those provisions.*" *See 1998 Biennial Regulatory Review*, 13 FCC Rcd 21879, ¶ 32 (1998) (emphasis added). If section 10(d)'s bar against forbearing from the "requirements" of section 271 did not reach the FCC's implementing regulations, there would have been no need for the Commission to mention them at all.

different terms, each term is presumed to have a different meaning.[48] Adopting Verizon's reading of section 10(d) would impermissibly equate the terms "provision" and "requirement" in violation of this basic canon.

Non-Accounting Safeguards Order. In any case, the FCC's OI&M rule is clearly an integral part of the section 272 statutory requirements. As MCI pointed out in its opposition to Verizon's petition, the *Non-Accounting Safeguards Order* makes clear that the OI&M prohibition is based on a straightforward reading of section 272(b)(1)'s "operate independently" requirement.[49] There, the FCC unequivocally concluded that "operational independence *precludes* a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities" and, likewise, bars a BOC from performing such functions for its affiliate.[50] As a result, "allowing the same personnel to perform [such functions] . . . would create the opportunity for such *substantial integration* of operating functions *as to preclude independent operation, in violation of section 272(b)(1).*"[51] The FCC thus adopted the prohibition on sharing OI&M functions because permitting such integration "would

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48 *See BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994) (when Congress uses particular language in one subsection of a statute, and uses different language in another subsection, "[i]t is generally presumed that Congress acts intentionally and purposely") (citation omitted); *Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion") (citation omitted).

49 *See* MCI Opposition at 3.

50 *NAS Order* ¶ 158 (emphasis added).

51 *Id.* ¶ 163 (emphasis added); *see also id.* (FCC "read[s] section 272(b)(1) to bar a section 272 affiliate from contracting with a BOC or another entity affiliated with the BOC to obtain operating, installation, and maintenance functions associated with the section 272 affiliate's facilities" and, similarly, "to bar a BOC from contracting with a

inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors."[52]

Despite the FCC's clear findings, Verizon attempts to suggest that the FCC "decided to exercise its discretionary rulemaking authority by 'balancing' competing policy interests underlying section 272" when it adopted the OI&M prohibition.[53] A careful review of the selected paragraphs relied upon by Verizon reveals that the only discussion of "balancing" in the *Non-Accounting Safeguards Order* arises not with regard to the FCC's adoption of the OI&M rule, but rather in the context of whether it is appropriate to impose structural separation requirements *in addition to* the ban on sharing OI&M functions.[54] Verizon further claims that the FCC recognized that other safeguards, such as the "'nondiscrimination safeguards, the biennial audit requirement, and other public disclosure requirements imposed by section 272' [would] limit the opportunities

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section 272 affiliate to obtain operating, installation, or maintenance functions associated with the BOC's facilities").

52 *Id.* (emphasis added).

53 Verizon 10/1 Memo at 2-4. At some level, of course, every FCC regulation is adopted based on a consideration of whether the benefits outweigh the costs. Surely Verizon is not suggesting that, by virtue of such balancing, an FCC regulation can *never* be a requirement of the Act.

54 *Compare NAS Order* ¶ 163 (analyzing need for OI&M rule), *with* ¶¶ 167-169 (declining to require additional safeguards sought by commenters, such as a prohibition against jointly marketing services). Verizon also relies on the FCC's analysis in the *NAS Reconsideration Order*. *See* Verizon 10/1 Memo at 2-4 & n.2 (citing *NAS Reconsideration Order*, 14 FCC Rcd 16299, ¶ 15-18 (1999)). As with the *NAS Order*, the cited paragraphs relate to requests that the FCC adopt structural separation requirements above and beyond those imposed by the OI&M rule. The sole paragraph discussing OI&M indicates that the FCC had "concluded [below] that an outright prohibition of shared operating, installation and maintenance functions *is necessary in the context of a section 272 affiliate*." *NAS Reconsideration Order* ¶ 20 (emphasis added). Moreover, the fact that the FCC found that the phrase "operate independently" is ambiguous in no way undercuts its conclusion, based upon the Commission's

for integration, and generally make blanket prohibitions on sharing unnecessary."[55] In fact, the FCC found it necessary to adopt the OI&M rule *despite* the existence of these safeguards.[56] Consequently, although Verizon's petition on its face seeks relief from a Commission regulation implementing the Act, Verizon's real complaint is not with the rule, but rather with the statutory requirement that Verizon offer interLATA services through a separate affiliate that "operates independently."[57]

Modification Of (Versus Forbearance From) Commission Rules. Verizon also argues that section 10(d) does not apply to the rules implementing section 272, because the FCC may "change those regulations by rule, through forbearance, or otherwise over time" without eliminating section 271(d)(3)'s requirement that a BOC provide

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"accumulated expertise," that section 272(b)(1) requires the OI&M rule. S*ee NAS Reconsideration Order* ¶ 17.

[55] Verizon 10/1 Memo at 4-5. Far from constituting a "blanket prohibition," the OI&M rule is only one of two activities prohibited by the FCC's interpretation of section 272(b)(1). *See NAS Order* ¶ 158 (finding that operational independence also precludes the joint ownership of switching and transmission facilities).

[56] *See NAS Order* ¶¶ 163, 167 (relying on the protections afforded by existing safeguards to justify its decision not to impose additional structural requirements). Verizon further argues that the passage of time has reduced the risk of cost misallocation because the FCC "severed any remaining links between prices and costs when it eliminated sharing from price caps." Verizon 10/1 Memo at 5. In fact, even under price caps, BOC interstate access rates continue to be linked to cost. For example, all exogenous cost changes prescribed in section 61.45(d) of the Commission's rules involve changes in the underlying regulated interstate costs of the price cap carrier, and require the carrier to adjust its price cap index to reflect such cost changes. These exogenous rate adjustments have, over the past decade, totaled hundreds of millions, if not billions, of dollars. *See* Letter from Richard S. Whitt, MCI, to William F. Maher, FCC, attached to *Ex Parte* Letter from A. Renée Callahan to Marlene H. Dortch, FCC, CC Docket No. 02-33 (Sept. 15, 2003).

[57] Verizon's reliance on the FCC's recent order terminating the rulemaking under section 273 is similarly misplaced. *See* Verizon 10/1 Memo at 5-6. The fact that the FCC concluded that regulations implementing section 273 were not necessary because no BOC had created a manufacturing affiliate is hardly a basis for concluding that the

interLATA services in accordance with the requirements of section 272.[58] Similarly, "if the Commission amends or forbears from its regulations or any requirements of section 272, a BOC's obligations – and the necessary showing it would have to make with respect to section 272 – would be amended accordingly."[59] Thus, according to Verizon, it has already made the necessary showing that it would comply with section 272 at the time its section 271 application was approved, and "the Commission can now forbear from the OI&M rules, without affecting the general 271 requirement that BOCs comply with section 272."[60]

This argument, however, is simply a variation of Verizon's assertion that section 10(d) does not bar forbearance from applying the FCC's regulations implementing section 272. The Commission almost invariably has discretion in adopting rules that specify requirements of a particular statutory provision. Indeed, if the precise requirements of the statute were clear, there likely would be no need for the Commission to enact implementing rules.[61] In the instant case, the FCC – the expert agency charged

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concerns articulated in the *NAS Order* "may prove . . . unwarranted." Verizon 10/1 Memo at 5.

58 Verizon 6/23 Memo at 7 (FCC "may forbear from the OI&M regulations under section 272 while continuing to enforce section 271(d)(3)(B) in full [because] section 271(d)(3)(B) requires a 271 applicant to comply with whatever regulations the FCC at any given time finds appropriate under section 272").

59 Verizon 10/1 Memo at 10. As Verizon points out, to the extent that the FCC were to *amend* the OI&M rule through a notice and comment rulemaking, the necessary showing required under sections 271(d)(3) would also be amended. *See* Verizon 10/1 Memo at 10-11. The authority to forbear from enforcing the Act's requirements, however, does not include the unilateral authority to amend or repeal those requirements.

60 Verizon 10/1 Memo at 11.

61 The Commission, for example, did not commence a rulemaking to specify the requirements of section 271. Rather, it simply determined on a case by case basis whether an applicant satisfied the statutory requirements.

with enforcing the Act – concluded that the OI&M rule will achieve the statutory mandate that Verizon's separate affiliate "operate independently."[62] Thus, the current regulations reflect the Commission's considered judgment regarding the specific rules that must be followed to comply with that statutory requirement. The fact that a different Commission might have reached a different determination regarding the rules that would best implement the statutory provision is irrelevant. Until modified after notice and opportunity for comment, the current OI&M rule represents the expert agency's determination of the requirements of section 272(b)(1) and, therefore, is covered by section 10(d).

On a related note, Verizon claims that "the Commission is entirely free today to revisit its initial interpretation of section 272," and that section 10 is simply "an alternative means of revisiting [the Commission's] prior determinations and interpretations of the Act."[63] Subject to the full notice and comment requirements of the Administrative Procedure Act, an administrative agency is, of course, free to depart from a prior ruling as long as it explains a rational basis for doing so.[64] That argument is irrelevant, however, where, as here, the relief sought is barred by the statute.

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62 *See NAS Order* ¶¶ 158, 163.

63 *See* Verizon 6/23 Memo at 10-11; *see also id.* at 7 (arguing that forbearing from a 272 regulation eliminates that requirement and thus 271(d)(3)(B) only requires compliance with "whatever regulations the [FCC] at any given time finds appropriate under section 272").

64 *See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983); *Bush-Quayle '92 Primary Comm., Inc. v. FEC*, 104 F.3d 448, 453 (D.C. Cir. 1997) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored") (citation omitted).

Relationship of Section 10(a) and 10(d). Finally, Verizon claims that "where the Commission concludes that a particular rule no longer is *necessary* to serve the statute's purpose, forbearing from the rule cannot be said to amount to forbearance from the statute itself."[65] Having determined that the OI&M rule meets the section 10(a) test and is thus unnecessary, Verizon concludes that forbearance from an unnecessary rule is not really forbearance at all. The requirements of section 10(d), however, are in addition to, not in lieu of, the section 10(a) standards that apply to any forbearance request. Under the latter provision, an applicant generally must show that the requested forbearance will not lead to unjust, unreasonable or unreasonably discriminatory practices by a carrier, will not harm consumers, and is consistent with the public interest. Congress, however, required something more before it granted the FCC the discretion to forbear from enforcing section 271. Because, as discussed below, Verizon has not demonstrated that the requirements of section 271 – including compliance with 272 – have been fully implemented, its argument that the OI&M rule meets section 10(a)'s test for forbearance is irrelevant.

C. Section 271 Has Not Been "Fully Implemented"

Verizon has argued throughout this proceeding that the Act does not bar its requested relief because section 10(d) does not incorporate by reference section 272's requirements, and, even if it did, the Commission's OI&M rule is not a "requirement" of section 272.[66] The record in this proceeding thus fails to demonstrate that section 10(d)'s

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[65] Verizon 6/23 Memo at 9; *see also* Verizon 10/1 Memo at 4-5 (arguing that the OI&M rule is no longer necessary).

[66] Verizon's petition does not mention section 10(d), and its later submissions argue simply that section 10(d) does not incorporate section 272 and/or that the OI&M rule is not a requirement of the Act. *See, e.g.*, Verizon Reply Comments, CC Docket No. 96-

"fully implemented" standard has been met. Absent such a showing, the Commission lacks the authority to forbear from its OI&M rule. Faced with this otherwise fatal flaw to its petition, Verizon recently submitted an *ex parte* letter arguing that the requirements of section 271 are "fully implemented" upon receipt of section 271 authority.[67]

As an initial matter, a decision on the merits of Verizon's petition is due in just over two weeks. The Commission should not at this late stage be required to entertain new arguments that Verizon should have raised in its original petition – which was filed over fourteen months ago. As the FCC has recognized in the context of its section 271 "complete when filed" rule, it should avoid relying on late-filed information, especially in the face of a mandatory statutory deadline such as the one imposed here.[68] In particular, refusing to rely on late-filed information would encourage carriers seeking forbearance to

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149, at 24-25 (Sept. 24, 2002); Verizon 6/23 Memo, *passim*. The only prior hint of section 10(d)'s "fully implemented" requirement is buried at the end of a legal analysis "concerning the Commission's obligation to address Verizon's petition for forbearance separate from the pending rulemaking proceeding concerning sunset of the section 272 separate affiliate requirements." *Ex Parte* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-149 (May 15, 2003) & "Verizon's OI&M Forbearance Petition Must Be Considered Promptly and Independently of Any Other Proceeding" at 10-11 (attached thereto).

67 Verizon 10/1 Memo at 10-11.

68 *See, e.g., Texas 271 Order* ¶ 35. The FCC has stated that exceptions to its complete-when-filed rule should occur only in extremely unique circumstances. In general, such circumstances arise when the carrier was unable to raise the issue earlier, either because it lacked the information or for some other reason out of its control. *See, e.g., Application by Verizon Virginia Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Virginia*, 17 FCC Rcd 21880, ¶¶ 18-20 (2002) & Separate Statement of Commissioner Kevin J. Martin at 4 (attached) (supporting the waiver of the FCC's complete-as-filed requirement because Verizon's failure to timely file its interconnection agreement was due to the FCC's own failure to timely resolve outstanding arbitration issues). Here, MCI raised the issue of section 10(d) in its September 2002 opposition to Verizon's petition. Rather than addressing the issue on reply, Verizon argued instead that the OI&M restriction is not a requirement of section 272. Consequently, no unique circumstances are present here.

present their *prima facie* showing in their initial petition, rather than in *ex parte* filings submitted weeks before the mandatory statutory deadline. Moreover, as with section 271 applications, strict adherence to such a rule would enable the Commission properly to manage its own internal consideration of the petition and ensure that commenters are not blindsided at the last minute by substantive arguments that could – and should – have been addressed in the initial forbearance petition.[69] If the FCC were to consider Verizon's late-filed claims, however, it should conclude that those arguments are baseless.

In particular, Verizon alleges that the requirements of section 271 have been fully implemented when a carrier obtains in-region long-distance authority in a state.[70] To substantiate that claim, Verizon relies on a provision of section 271 that requires the Commission to find that a BOC "has fully implemented *the competitive checklist* in [section 271(c)(2)(B)]"[71] in order to grant an application for in-region long-distance authority in a particular state.[72] Verizon thus erroneously presumes that Congress intended to permit the FCC to refrain from enforcing the key market-opening requirements of the Act the instant that the Commission had determined that the BOC was actually complying with some of those requirements.[73] This argument confuses what

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69 *See, e.g., Texas 271 Order* ¶¶ 35-36.

70 Verizon 10/1 Memo at 11-12.

71 47 U.S.C. § 271(d)(3)(A)(i).

72 Verizon 10/1 Memo at 11-12.

73 *See id.* at 12 (confirming that, under Verizon's reading of section 10(d), the FCC can forbear from applying section 272 to a BOC "at the moment the BOC obtains relief under section 271").

Congress required a BOC to show in order to gain in-region long distance authority with the showing required to satisfy section 10(d).

Foremost, Congress' use of the phrase "fully implemented" in sections 10(d) and 271(d)(3) does not exist in a vacuum. One provision relates to the checklist being "fully implemented," while the other relates to the requirements of section 271 being "fully implemented." However, full implementation of the competitive checklist – one component of section 271 – is not equivalent to fully implementing section 271 as a whole. Section 10(d) requires as a prerequisite of forbearance that a BOC fully implement *all* of the requirements of section 271, including continuing obligations – not just those requirements on the competitive checklist.[74] Moreover, the different purposes of section 271 and section 10 confirm that full implementation for purposes of section

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[74] Notably, the fact that both section 10(d) and section 271(d)(3) use the phrase "fully implemented" does not mean that Congress intended for that phrase to have the same meaning in both provisions. In this case, the same two words appear in different Titles of the Act in provisions that, as discussed, have very different purposes. As the District of Columbia Circuit has noted, "[o]n numerous occasions, both the Supreme Court and this court have determined, after examining statutory structure, context and legislative history, that identical words within a single act have different meanings." *Martini v. Federal National Mortgage Ass'n*, 178 F.3d 1336, 1343 (D.C. Cir. 1999); *see also Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932) (presumption that identical words in an act have the same meaning "is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent"). Cases in which courts have assigned the same meaning to a word or phrase appearing more than once in a statute typically involve very different circumstances from those presented here. In a case involving a provision of the tax code, for example, the Supreme Court concluded that the term "overpayment" that appeared in different subsections of the same statutory provision should be given the same meaning in both subsections. *See Sorenson v. Secretary of the Treasury*, 475 U.S. 851 (1986). Moreover, in the *Sorenson* case, the subchapter in which both subsections appear included an explicit definition of "overpayment," thus "strengthen[ing] the presumption" that it has the same meaning throughout that subchapter. *Id.* at 860. Third, both subsections concerned the same subject matter, namely, treatment of overpayments. *Id.* None of these factors is present in the instant case.

10(d) requires more than a determination that the checklist has been satisfied. According to Senator McCain, the forbearance provision of section 10 is triggered only "when markets are deemed competitive."[75]

In addition, as noted, the Commission has held that section 271 requires a BOC seeking to obtain in-region long distance authority to show that it has *opened* its local markets to competitive entry.[76] But Congress did not require the BOCs to open their markets only to permit the BOCs immediately to close them again. Instead, Congress recognized that even after a BOC had satisfied the 271 checklist requirements and obtained in-region authority, it would continue to be dominant in local telecommunications markets. Consequently, Congress imposed on the Commission an ongoing obligation under section 271(d)(6) to ensure that a BOC continues to comply with the conditions it is required to satisfy in order to obtain section 271 approval.[77] A BOC has not fully implemented the ongoing requirements of section 271 just because it has received interLATA authority.[78] Indeed, those requirements are not even

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[75] 141 Cong. Rec. S. 7942, 7956 (June 8, 1995) (statement of Senator McCain) (quoting from Heritage Foundation letter).

[76] *See, e.g., Texas 271 Order*, ¶¶ 1, 419; *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶¶ 1, 15, 426, 428 (1999).

[77] *See* 47 U.S.C. § 271(d)(6); *Texas 271 Order*, ¶ 434 (noting that "Section 271 approval is not the end of the road," that "[t]he statutory regime makes clear that [the BOC] must continue to satisfy the 'conditions required for . . . approval' after it begins competing for long distance business," and discussing "Congress's recognition that a BOC's incentives to cooperate with its local service competitors may diminish . . . once the BOC obtains section 271 approval").

[78] Nor is Verizon correct that, after receipt of section 271 authority, "the requirement to continue to comply with section 272 is a requirement of section 272 itself – not section 271." Verizon 10/14 Letter at 2; *see also* Verizon 10/1 Memo at 12. To the contrary, section 271(d)(6) requires the FCC to ensure continued compliance with the conditions of section 271 approval, including section 272's separate affiliate rules, until

incorporated in the competitive checklist. It thus would have been completely irrational for Congress to have permitted the FCC to forbear from enforcing the requirements of 271 as soon as a BOC achieved interLATA authority, and it did not do so. Consequently, the most reasonable reading of section 10(d) is that a BOC's satisfaction of the statute's section 271 requirements falls well short of the showing required to meet the requirements of section 10(d).

As MCI previously has shown,[79] the most reasonable construction of the "fully implemented" requirement in section 10(d) is that it is satisfied, according to Senator McCain, "when markets are deemed competitive."[80] Specifically, the Commission should not consider section 10(d) satisfied until it can conclude that in a relevant geographic area, a robust wholesale market exists that enables competing providers to obtain access to the telecommunications services and facilities they require to enter the market without the need for continued enforcement of sections 251(c) or 271. Stated differently, the "fully implemented" standard requires a showing that a BOC no longer is dominant in the provision of the network elements and telecommunications services that entrants require to enter and compete effectively with the BOC.[81]

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those rules have sunset, or otherwise been repealed or amended in a notice and comment rulemaking.

79 *See* Comments of WorldCom, Inc. on Verizon's Petition for Forbearance, CC Docket No. 01-338, at 12 (Sept. 3, 2002).

80 *See supra* note75.

81 As Z-Tel has explained elsewhere, the AT&T non-dominance proceeding provides relevant guidance regarding the statutory test for forbearance. *See* Z-Tel *Triennial Review* Reply Comments, CC Docket No. 01-338, at 118-23 (July 17, 2002) (citing *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995).

The fact that section 10(d) applies to both section 251(c) and section 271 reinforces this reading of "fully implemented." Both provisions focus on opening local telecommunications markets to entry through either interconnection with an incumbent LEC, lease of unbundled network elements, or resale of retail services or some combination thereof. In view of the paramount importance that Congress assigned to fostering the development of competitive local markets, the most reasonable reading of section 10(d) is to require the Commission to find that a robust wholesale market for facilities and services exists in a relevant geographic area so that it is assured that forbearing from enforcing the requirements of section 251(c) or section 271 will not lead promptly to the remonopolization of that market (as well as the long distance market).

III. Conclusion

The Commission lacks the authority to grant the relief requested by Verizon until either the section 272 separate affiliate requirements have sunset, or the requirements of section 271 have been "fully implemented," whichever occurs later. Because Verizon clearly has not demonstrated that the requirements of section 271 have been fully implemented in the states in which it has received in-region, interLATA authority, its petition must be denied.